

Notice of Allowability

Application No.

10/764,188

Applicant(s)

SCHLUETER, BARRY

Examiner

Kent L. Bell

Art Unit

1661

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to application filed 1/23/04
2. ☒ The allowed claim(s) is/are THE CLAIM
3. ☒ The drawings filed on 1/23/04 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.
THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____

K. L. Bell

Detailed Action

Examiner's Amendment

An Examiner's Amendment to the record appears below. Should the changes and/or additions be unacceptable to Applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **Must** be submitted no later than the payment of the Issue Fee.

Examiner's Amendment Authorized

Authorization for this Examiner's Amendment was given in a telephone interview with Attorney Cynthia A. Bonner on May 24, 2004.

Amendment to the Specification

The Specification has been amended as follows:

A. Page 1, line 25, The following has been inserted:

--The new Hibiscus originated from a cross-pollination made by the Inventor using 'Green Hornet' (not patented) as the female parent and 'Red Snapper' (not patented) as the male parent. The new Hibiscus was discovered and selected by the Inventor as a plant within the progeny of the stated cross-pollination in a controlled breeding program in Webster, Texas.--.

Detailed Action

- B. Page 2, line 5, "or" has been deleted and --of-- has been inserted in its place.
- C. Page 2, lines 25 and 26 have been deleted.
- D. Page 5, line 6, "Cordate" has been deleted and --Ovate-- has been inserted in its place.
- E. Page 7, line 3, --13-- has been inserted before "C".
- F. Page 7, line 28, "Size" has been deleted and --Length-- has been inserted in its place.
- G. Page 8, after line 1, before line 2, The following has been inserted:
--Pistil Number: 1--.

Amendment to The Claim

The Claim has been amended as follows:

- A. Page 9, The Claim has been deleted and the following Claim has been inserted in place:
--A new variety of *Hibiscus rosa-sinensis* plant as shown and described.--.

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Detailed Action

Future Correspondence

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Kent L. Bell whose telephone number is (571) 272-0973. The Examiner can normally be reached Monday through Thursday from 6:00 am to 4:30 pm.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Bruce Campell, can be reached at (571) 272-0974.

The fax phone number for the group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (571) 272-1600.

K. L. Bell

**KENT BELL
PRIMARY EXAMINER**

Kent L. Bell